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**Premier Plastering, Inc. and Plasterers Local No. 80
a/w Operative Plasterers & Cement Masons In-
ternational Association, Petitioner and Brick-
layers and Allied Craftworkers, Local 16, In-
tervenor. Case 8-RC-16341**

September 16, 2004

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAMBER
AND WALSH

On April 4, 2002, the Regional Director for Region 8 issued a Decision and Direction of Election in which he found appropriate the petitioned-for unit of plasterers working in Ashtabula, Cuyahoga, Geauga, Lake, and Loraine Counties in Ohio. Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Intervenor filed a timely request for review of the Regional Director's Decision and Direction of Election. On May 15, 2002, the Board granted the Intervenor's request for review. The Petitioner filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

After careful consideration of the entire record, including the Petitioner's brief on review, we find, on the record before us, that the only unit appropriate for bargaining is a residual geographic unit of all plasterers working in areas not otherwise covered by a current 9(a) agreement.¹

Facts

This case arises from the unique and long-running dispute between the Bricklayers and the Operative Plasterers' unions. Prior to 1998, the Operative Plasterers and the Bricklayers were bound to a nationwide agreement establishing geographical limitations on each other's jurisdiction where there was overlapping coverage of job classifications. While providing stability and preventing raids, this agreement resulted in a patchwork quilt of county-based units founded more on the convenience of the two unions than on a rational grouping of the employers' employees. In 1998, the Operative Plasterers unilaterally revoked this agreement. This move was upheld by the AFL-CIO in July 2000 and was the catalyst for a number of petitions from both the Plaster-

ers and the Bricklayers seeking to expand their relationships and establish bargaining relationships in territory not permitted to them under their pre-1998 agreement.

Since the jettisoning of the nationwide agreement, the Plasterers and Bricklayers have filed numerous petitions with the Board and have been locked in years of litigation. Nearly all of these cases, such as this one, presented difficult bargaining unit scope issues.²

Here, the Petitioner seeks to represent a unit of plasterers working in five counties in northeastern Ohio. The Employer and the Petitioner are parties to a 8(f) agreement covering, by its terms, Cuyahoga County. The parties, however, have historically applied the agreement to work in adjacent counties as well. The Employer and Intervenor are parties to a 9(a) agreement covering bricklaying and cement masonry work in Ashtabula, Lake, and Geauga Counties.³ The Employer is also party to two other collective-bargaining agreements with other Operative Plasterers locals covering limited geographic areas in Ohio. First, the Employer has an 8(f) agreement with Plasterers Local 109 covering Carroll, Holmes, Medina, Portage, Stark, Summit, Tuscarawas, and Wayne Counties effective from June 1, 2001, to June 1, 2006. Second, the Employer has a 9(a) contract with Plasterers Local 179 covering Trumbull, Mahoning, and Columbiana Counties, effective from June 1, 2001, to May 31, 2005. No party disputes that both Intervenor's and Local 179's are 9(a) agreements.

The Regional Director found the geographically-limited petitioned-for unit appropriate. He based this finding on the fact that the Employer uses a core group of plasterers for all of its jobs in the counties covered by the petition. However, the record shows that this same group of core employees performs plastering work in areas not covered by the petition and that the Employer does not geographically limit the areas in which it seeks work. The Intervenor argues that the Regional Director erred in finding the petitioned-for unit appropriate for two reasons. First, the Intervenor argues that the unit should have no geographic limitations, that such a unit would be barred by Local 179's 9(a) agreement, and that accordingly the petition must be dismissed. Second, the Intervenor argues that the unit should be limited to plas-

¹ See fn. 3, *infra*.

² See, e.g., *G.L. Milliken Plastering*, 340 NLRB No. 138 (2003); *Saylor's, Inc.*, 338 NLRB No. 35 (2002); *Alley Drywall, Inc.*, 333 NLRB 1005 (2001); *Pontiac Ceiling & Partition Co.*, 337 NLRB 120 (2001); *Reichenbach Ceiling & Partition Co.*, 337 NLRB 125 (2001); *Verkler, Inc.*, 337 NLRB 128 (2001).

³ Intervenor's 9(a) agreement with the Employer was set to expire on April 30, 2002. The petition was filed on February 20, 2002, well within the 60 to 90-day open period for such filings. This 9(a) agreement, therefore, does not result in the exclusion of Ashtabula, Lake, and Geauga Counties from the unit.

terers working in Cuyahoga County, the Petitioner's original 8(f) jurisdiction.

As explained below, we agree that, on this record, the petitioned-for five-county unit is not an appropriate unit for bargaining and that normally the only appropriate unit would include all of the Employer's plasterers without geographic limitation. However, because the Employer is party to an admitted 9(a) agreement covering a limited geographic area, we will direct an election in a residual geographic unit of all of the Employer's plasterers working in areas not covered by such an agreement.⁴

Analysis

We start with the basic proposition that where an employer uses a core group of employees to work at its various worksites regardless of job location, the proper unit description is one without geographic limitation. See *Alley Drywall*, 333 NLRB 1005, 1008 (2001). Compare *Oklahoma Installation Co.*, 305 NLRB 812 (1991) (finding unit limited to one county appropriate); *Dezcon, Inc.*, 295 NLRB 109 (1989) (finding petitioned-for three county unit appropriate based on community of interest factors). Furthermore, the Board has held that the historical limitations on bargaining, while a factor to be weighed in the analysis, are not conclusive of the appropriateness of a petitioned-for unit. See *Alley Drywall*, 333 NLRB at 1008.

Based on the sparse record before us, we are unable to conclude that the Employer's plasterers possess a community of interest while working in the petitioned-for five counties that is somehow different from that of the same employees when working in other counties. The only fact that could justify such a grouping would be the historical pre-1998 geographic boundaries. However, because the Plasterers and Bricklayers scuttled those traditional boundaries, we do not accord controlling weight to that bargaining history. See *Alley Drywall*, 333 NLRB at 1007–1008; *A. C. Pavement Striping Co.*, 296 NLRB 206, 210 (1989).

Accordingly, we agree with the Intervenor's first proposition that the only appropriate unit would normally include all of the Employer's plasterers without regard to the location of the Employer's jobsites. The Board's decisions in *Oklahoma Installation*, *supra*, and *Dezcon*, *supra*, are not to the contrary. In both cases, although the Board approved geographically-limited units even though the employers used a core group of employees at all its worksites, the Board based its findings on a thorough examination of all the community of

interest factors and concluded that the petitioned-for units were appropriate. Here, the Regional Director relied solely on the fact that the Employer uses a core group of employees, citing *Dezcon*. Finding the petitioned-for unit appropriate, however, requires more than the existence of a core group of plasterers and the incantation of *Dezcon*. Instead, the Regional Director should have examined all of the community of interest factors to determine whether this unit was appropriate. However, the Regional Director was unable to perform the required analysis because the record failed to contain a sufficient level of evidence to justify the petitioned-for unit.⁵ Even if we could imagine a scenario under which such a geographically-limited unit might be considered appropriate, the Petitioner's failure to adduce sufficient record evidence foreclosed that possibility. *Allen Health Care Services*, 332 NLRB 1308, 1309 (2000).

While we agree with the Intervenor that the petitioned-for five-county unit is inappropriate, we do not agree that the only appropriate unit is one completely without geographic limitation and consequently barred by the current 9(a) agreement between the Employer and Local 179 covering Trumbull, Mahoning, and Columbiana Counties. Recently, in *G.L. Milliken Plastering*, 340 NLRB No. 138 (2003), the Board approved the use of a geographic residual unit where the employer was a party to various geographically-limited 9(a) agreements. In that case, the employer maintained a number of geographically-limited 9(a) agreements with various Plasterers locals. In an attempt to avoid potential contract bar problems, Bricklayers Local 9 petitioned for a residual unit of the employer's plasterers in all areas not covered by existing 9(a) agreements. The Board approved the unit and remanded the case to determine the proper residual unit in which to hold an election.

Here, the Intervenor argues that the 9(a) agreement between the Employer and Plasterers Local 179 must bar the petition because an election can only be held in an overall unit. We reject that argument and instead follow the reasoning of *G.L. Milliken* and direct the Regional Director to craft a residual geographic unit which would exclude from the unit those areas covered by current 9(a) agreements.

Accordingly, we remand this case to the Regional Director to direct an election in a unit of all the Employer's plasterers excluding those areas covered by the current

⁴ Based on our reading of the record, the unit description should only exclude Trumbull, Mahoning, and Columbiana Counties because those are covered by a current 9(a) agreement with Local 179.

⁵ The hearing lasted a mere 27 minutes, and the parties produced a scant 27 pages of transcript.

9(a) agreement between the Employer and Plasterers
Local 179.

Dated, Washington, D.C. September 16, 2004

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD